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REMARKS

This response is intended as a supplement to the response filed September 7, 2005 in response to the final Office Action mailed July 13, 2005. By this supplemental response, claim 1 is amended and claim 2 is cancelled.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are anticipated or obvious under the provisions of 35 U.S.C. §§102 and 103. Further, Applicants believe that all of the claims are directed to statutory subject matter pursuant to 35 U.S.C. §101. Thus, Applicants believe that all of these claims are now in allowable form.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing the instant response.

Amendments to the Claims

By this supplemental response, claim 1 is amended and claim 2 is cancelled. The amendments to claim 1 are fully supported by the Specification, Drawings and Claims as originally filed. For example, the amendments are supported at least by originally filed claim 2, as well as page 6, lines 19-20, and page 7, lines 14-15.

Thus, no new matter has been added, and the Examiner is respectfully requested to enter the amendments.

Furthermore, the amendments to claim 1 contain language previously considered by the Examiner. For example, one portion of the amendments to claim 1 (i.e., the "wherein the data structure is formatted for broadcast in combination with the broadcast advertisement to one or more set top terminals" portion) recites language that was previously considered by the Examiner as part of claim 2. Another portion of the amendments to claim 1 (i.e., the "broadcast advertisement comprising audio and video" portion) recites language that was previously considered by the Examiner as part of claim 21.

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Thus, because the amendments have been previously considered by the Examiner, the amendments should be entered in response to the Final Office Action.

35 U.S.C. §101 Rejection of Claims 1-20

The Examiner has rejected claims 1-20 as non-statutory subject matter.

Applicants respectfully traverse the rejection.

Please see the Applicants remarks regarding this rejection in the response filed September 7, 2005.

As a supplement to those previously presented remarks please also consider as follows. In the Advisory Action mailed October 5, 2005, the Examiner alleges (emphasis added below):

“Applicant traverses the rejection of 35 USC § 101.

In response, the Examiner respectfully disagrees because MPEP 2106.IV.B.1.(a) recites:

(a) Functional Descriptive Material: "Data Structures"
Representing Descriptive Material Per Se or Computer
Programs Representing Computer Listings Per Se

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claim 1 claims a data structure stored on computer-readable media that has functional interrelationship between electronic program guide and broadcast advertisement data structure but fails to claim functional interrelationships between its data structure and the computer software and hardware components which permit the data structure's functionality to be realized. As such, claim 1 is not statutory. Claims 2-20 depend directly or indirectly from independent claim 1, and as such claims 2-20 are directed to nonstatutory subject matter."

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Thus, the Examiner acknowledges that claim 1 comprises a data structure that has a functional interrelationship between an EPG and a broadcast advertisement. However, the Examiner also alleges that MPEP 2106.IV.B.1(a) requires that the claim language also recite functional interrelationships between the data structure and the computer software and hardware components. The Applicant respectfully disagrees. As the above-emphasized portion of MPEP 2106.IV.B.1(a) states, "a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components". That is, it is the encoding of the computer-readable medium with the data structure which defines the structural and functional interrelationships between the data structure and the computer software and hardware components. MPEP 2106.IV.B.1(a) does not state an additional requirement, beyond the encoding of the computer-readable medium with the data structure, that the claim also define structural and functional interrelationships between the data structure and the computer software and hardware components.

Please also refer to the second paragraph of MPEP 2106.IV.B.1(a), which in relevant part recites (emphasis added below):

"In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material *per se* from claims that define statutory inventions."

Thus, the second paragraph of MPEP 2106.IV.B.1(a) states that the computer-readable medium encoded with a computer program is the computer element which defines structural and functional interrelationships between the computer program and the rest of the computer.

Furthermore, the Applicants also disagree with the Examiner's allegation that the language of claim 1 "fails to claim functional interrelationships between its data structure and the computer software and hardware components." Instead, as is clearly recited in the claim, "the data structure [is] operative to provide a link between the broadcast

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advertisement and an electronic program guide." The presentation of the electronic program guide is in part a software component of the set top terminal, and thus the claim language, as presently recited, does in fact claim a functional interrelationship between the data structure and a computer software component. For example, the following portion of the Specification discloses (emphasis added below):

"Software programs 114, 116, 118, and 120 are stored in memory 112 on the set top terminal 102 and used to decode and present the audio, video and other data received from the distribution network 104 on a display device 106 through the terminal's display interface 110. Software components used to present audio and video data, as well as advanced navigation and EPG features of the present invention include set top OS software 114, presentation software 116, menu software 118, and application launcher software 120. Set top operating system software 114 is used to provide the core operating system functionality of the set top terminal 102, such as basic input/output and other low-level functions. The OS software 114 also provides a framework for executing application program code, e.g., presentation 116, menu 118, and application launcher 120 software.

The set top presentation software 116 is used to present navigation tools and an electronic program guide (EPG) to the set top terminal user. The presentation software 116 fetches and displays scripts, which are pages of content, such as formatted pages of program guide data, which may be used to construct an electronic program guide. The scripts are retrieved from a data carousel 124 located on the distribution network 104 in response to user commands. According to one embodiment of the invention, the data carousel 124 is generated by a cable head end and transmitted over the cable television broadcast distribution network."
(page 5, line 20, to page 6, line 13)

Thus, as disclosed above, the presentation software, a software component of the set top terminal, is used to present the EPG, and therefore, the EPG, as viewed by the user, is in part a software component. Thus, claim 1 does claim functional interrelationships between the data structure and computer software components.

Thus, for at least the reasons discussed above and the reasons presented in the response filed on September 7, 2005, Applicants respectfully request that the Examiner's rejection be withdrawn.

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35 U.S.C. §102 Rejection of Claims 1-5, 9-21

The Examiner has rejected claims 1-5 and 9-21 under 35 U.S.C. §102(e) as being unpatentable by Fries (US 6317885, hereinafter "Fries"). Applicants respectfully traverse the rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The Fries reference fails to disclose each and every element of the claimed invention, as arranged in claim 1.

Specifically, the Fries reference fails to disclose at least "wherein the data structure is formatted for broadcast in combination with the broadcast advertisement to one or more set top terminals, the broadcast advertisement comprising audio and video."

The Fries reference discloses an "interactive entertainment and information system using a television set-top box, wherein pages of information are periodically provided to the set-top box for user interaction therewith" (abstract). In particular, the Fries reference discloses (emphasis added below):

"More particularly, the information service server includes a carousel delivery application 49 for delivering a carousel 50 (FIG. 2) of rendered HTML page images to the set-top box 28 along with meta-data for each page. Each page image consists of a single frame MPEG2 video sequence that is capable of being decoded by an MPEG video decoder 52 in the set-top box 28 (FIG. 3). The meta-data for each page describe the structure and contents of the page image. As described above, the carousel 50 of page images and meta-data are delivered to a client set-top-box 28 as a standard MPEG2 Transport Stream, broadcast in-band over a six MHz NTSC channel." (column 4, lines 17-28)

Thus, the Fries reference discloses that each page image is a single frame of MPEG2 video. However, the Fries reference does not teach or suggest a data structure which is formatted for broadcast in combination a broadcast advertisement comprising audio and video.

Thus, the Fries reference fails to disclose each and every element of the claimed invention, as arranged in claim 1.

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As such, Applicants submit that independent claim 1 is not anticipated and fully satisfies the requirements of 35 U.S.C. §102 and is patentable thereunder. Moreover, claim 21 contains substantially similar relevant limitations as those discussed above in regards to claim 1, and thus is also patentable under 35 U.S.C. §102. Furthermore, claims 2-5 and 9-20 depend, either directly or indirectly, from independent claims 1 and 21 and recite additional features thereof. As such and at least for the same reasons as discussed above, Applicants submit that these dependent claims are also not anticipated and fully satisfy the requirements of 35 U.S.C. §102 and are patentable thereunder. Therefore, Applicants respectfully request that the Examiner's rejection be withdrawn.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are anticipated or obvious under the respective provisions of 35 U.S.C. §102 and §103. Further, Applicants submit that the pending claims are directed to statutory subject matter. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Stephen Guzzi at (732) 383-1405 or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 10/12/05



Eamon J. Wall
Registration No. 39,414
Attorney for Applicants

PATTERSON & SHERIDAN, LLP
595 Shrewsbury Avenue, Suite 100
Shrewsbury, New Jersey 07702
Telephone: 732-530-9404
Facsimile: 732-530-9808

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